

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA **CASE NO. 1:02-cr-29**

	:
Plaintiff	:
VS.	:
	:
	:
FLOYD BRUCE	:
	:
Defendant	:
	:

DEFENDANT'S SENTENCING MEMORANDUM

Now comes the Defendant herein, by and through his counsel, and respectfully submits the following Memorandum, pursuant to this Court's Order of May 19, 2005.

This matter is back before the Court upon a remand for re-sentencing by the United States Court of Appeals for the Sixth Circuit in *United States v. Bruce*, No 03-3110 (6th Cir. April 7, 2005), ordering re-sentencing in light of *United States v. Booker*, 125 S.Ct. 738 (2005). However, counsel submits that any potential issues may be moot.

First, the potential issues that could be raised under *Booker* have already been decided by the Sixth Circuit in this case. That is, this Court's denial of a 2 point reduction for Acceptance of Responsibility and the giving of a 2 point enhancement for Obstruction of Justice at the time Defendant was sentenced were both affirmed by the Sixth Circuit. Although *Booker* would now seemingly prohibit the enhancement absent specific factual findings by a jury and/or admission through a Guilty Plea, it does not

appear to counsel that the change in the case law will assist this Defendant.

Secondly, and perhaps more importantly, Defendant has completed the service of his sentence of imprisonment. The Court imposed a sentence of 33 months on January 17, 2003. Having been given credit for pre-sentence incarceration and, apparently, for good time, Defendant was released from the custody of the Bureau of Prisons on October 15, 2004. He is now being detained by Immigration and Customs Enforcement (ICE) at the Pike County Jail in Hawley, Pennsylvania awaiting further Deportation proceedings (as part of the Court's Sentencing Order, the Court "recommended" to ICE that Defendant be deported). Even assuming that *Booker* might apply and the 2 level enhancement was not applied, a modification of Defendant's sentence would serve no purpose at this point.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of March, 2005, I presented the foregoing to the Clerk of Courts for filing and uploading to the CM/ECF system which will send notification of such filing to Timothy D. Oakley, AUSA.

S:/PETER ROSENWALD
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